

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DANNY TABB,

CASE NO. C21-5541-LK

Plaintiff,

ORDER ADOPTING REPORT AND RECOMMENDATION

NAPHCARE, *et al.*,

Defendants.

This matter comes before the Court on United States Magistrate Judge Theresa L. Fricke's Report and Recommendation. Dkt. No. 62. Having reviewed this document, the remaining record, and the applicable law, the Court adopts the Report and Recommendation, *id.*, and denies Mr. Tabb's motions for entry of default and default judgment against Defendants Jonathan Slothower, Angela Valencia, Sabrina Shultz, and NaphCare, Dkt. Nos. 34, 35.

In July 2021, Mr. Tabb, who is proceeding *pro se* and *in forma pauperis*, filed a complaint under 42 U.S.C. § 1983 alleging that he has been denied medical care and reasonable accommodations for his disability while incarcerated at the Pierce County Jail. Dkt. No. 1-1. He filed motions for default and default judgment against Defendants in May 2022. Dkt. Nos. 34, 35.

1 Judge Fricke recommended that the Court deny Mr. Tabb's motions because Defendants
 2 are not in default; they timely filed a motion to dismiss within 60 days of the date they were sent
 3 waivers of service. Dkt. No. 62 at 1–2. Mr. Tabb did not file objections to the Report and
 4 Recommendation. Instead, after the deadline to file objections passed, he filed a motion for an
 5 extension of time, claiming that he had been unable to access the law library or any legal
 6 documents since June 21, 2022, "due to having been on quarantine status." Dkt. No. 77 at 1.
 7 Observing that Mr. Tabb was able to file a motion for summary judgment and a motion to compel
 8 discovery on June 23, 2022, Judge Fricke denied his motion for an extension. Dkt. No. 78 at 2.

9 As Judge Fricke notes in her Report and Recommendation, Defendants are not in default.
 10 Their deadline to either answer Mr. Tabb's complaint or file a motion under Rule 12 of the Federal
 11 Rules of Civil Procedure was 60 days after March 15, 2022, or May 16, 2022. *See* Dkt. No. 62 at
 12 2; Dkt. No. 16 at 1–2 (requesting that Defendants execute a waiver of service of summons and
 13 stating that upon timely returning a signed waiver, Defendants would have "sixty (60) days after
 14 the date designated on the notice of lawsuit to file and serve an answer to the complaint or a
 15 motion" under Rule 12).¹ Defendants timely filed a Rule 12 motion to dismiss on May 16, 2022.
 16 Dkt. No. 31.

17 The Court ADOPTS Judge Fricke's Report and Recommendation, Dkt. No. 62, and
 18 DENIES Mr. Tabb's motions for default and default judgment, Dkt. Nos. 34, 35.

19 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
 20 to Mr. Tabb at his last known address.

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 23 ¹ 60 days after March 15, 2022 is May 14, 2022—a Saturday. Under Local Civil Rule 6, a deadline that falls on "a
 24 Saturday, Sunday, or legal holiday . . . continues to run until the following day that is not a Saturday, Sunday, or legal
 holiday"—in this case, Monday, May 16, 2022.

1 Dated this 11th day of October, 2022.

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Lauren King
United States District Judge